

REMARKS

Claims 1-57 are currently pending in this application. Claims 19 and 26 are amended herein to amend the dependency of these claims. Support for these claim amendments can be found throughout the application as originally filed. Accordingly, Applicants submit that no new matter is introduced into this application by way of these amendments.

Restriction Requirement

The restriction requirement subjected the pending claims to restriction under 35 U.S.C. § 121, between one of the following inventions:

Group I) Claims 1-9 and 11-18, drawn to methods of producing embryogenic callus from immature inflorescence explants of St. Augustinegrass plants and regenerating said plants from said explants, classified in class 435, subclass 430, for example;

Group II) Claim 10, drawn to an isolated embryonic callus, classified in class 435, subclass 430.1, for example;

Group III) Claims 19-25 and 31-57, drawn to a method of generating transformed St. Augustinegrass plants, classified in class 800, subclass 278, for example; and

Group IV) Claims 26-30, drawn to a transgenic St. Augustinegrass plant, classified in class 800, subclass 300, for example.

Election

Applicants respectfully disagree and traverse this Restriction Requirement. However, in order to be fully responsive to the Restriction Requirement, Applicants provisionally elect the subject matter of Group IV for prosecution on the merits, represented by claims 26-30, drawn to a transgenic St. Augustinegrass plant, classified in class 800, subclass 300, for example.

Applicants traverse on the grounds that a search of the provisionally elected Group IV would likely encompass the subject matter of Group III, and thereby would not constitute an undue burden to the Examiner. One of the criteria for a proper requirement for restriction between patentably distinct inventions is that there must be a serious burden on the Examiner if restriction is required. *See* M.P.E.P. § 803.01. Applicant submits that a search of the subject

matter of provisionally elected Group IV is likely to be broad enough to encompass the art relevant to Group III, and that this would not constitute a serious burden on the Examiner. Applicant respectfully points out that the restricted subject matter of provisionally elected Group IV and Group III shares the same classification in class 800 as set forth in the Restriction Requirement.

Furthermore, Applicant submits that it is likely that references discussing a transgenic St. Augustinegrass plant would also discuss at least one method of preparing the transgenic St. Augustinegrass plant. Applicant therefore submits that it would not constitute an undue burden to search the subject matter of Group III and Group IV together. Applicant also traverses on the grounds that a search of Groups I and II would not constitute an undue burden. Applicant respectfully points out that the restricted subject matter of Group I and Group II received the same classification in class 435.

Applicants have amended the dependency of claims 19 and 26, such that the claims corresponding to the subject matter of non-elected Group III, drawn to a method of generating transformed St. Augustinegrass plants, now depend from claims corresponding to the subject matter of provisionally elected Group IV, drawn to a transgenic St. Augustinegrass plant. Applicants respectfully reserve the right to request rejoinder of the claims corresponding to non-elected Group III, drawn to a method of generating transformed St. Augustinegrass plants, following allowance of the claims drawn to a transformed St. Augustinegrass plant of Group IV.

Accordingly, Applicant respectfully requests reconsideration and withdrawal of the Restriction Requirement under 35 U.S.C. § 121.

CONCLUSION

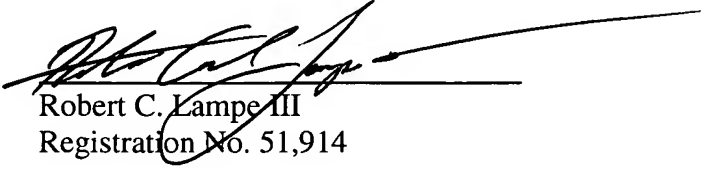
An indication of allowance of all claims is respectfully solicited. Early notification of a favorable consideration is respectfully requested.

Respectfully submitted,

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By:


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